PTO/SB/33 (07-05)

Doc Code: AP.PRE.REQ

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PRE-APPEAL BRIEF REQUEST FOR REVIEW

Docket Number (Optional)
Q170-US1

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Application Number	Filed
10/612,439	July 1, 2003

First Named Inventor
BELHAROUK, Ilias et al.

Art Unit	Examiner
1795	MAPLES, John

Applicant requests review of the final rejection in the above-identified patent application. No amendments are being filed with this request.

This request if being filed with a notice of appeal.

The review is requested for the reason(s) stated on the attached sheet(s).
Note: No more than five (5) pages may be provided.

I am the

- [ ] applicant/inventor.
- [ ] assignee of record of the entire interest. See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed. (Form PTO/SB/96)
- [X] attorney or agent of record. Registration number 42,491
- [ ] attorney or agent acting under 37 CFR 1.34. Registration number if acting under 37 CFR 1.34. _____

Signature

Travis Dodd
Typed or printed name

818-833-2003
Telephone number

06/23/2009
Date

NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required.
Submit multiple forms if more than one signature is required, see below*.

[X] *Total of _____ forms are submitted.

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In Re Application of:
BELHAROUK, Ilias et al.

Serial No.: 10/612,439 Examiner: Maples, John

Filed: July 1, 2003 Art Unit: 1795

Title: IMPROVED POSITIVE ELECTRODE MATERIAL FOR LITHIUM ION BATTERIES

Mail Stop AF
Commissioner for Patents
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Pre-Appeal Brief Request for Review

This communication is in response to the Advisory Action mailed on June 2, 2009 (the Advisory Action). This Advisory Action maintains the rejections in a Final Office Action mailed on March 24, 2009 (the Office Action).

Pending Claims

Independent Claim 1 is the only independent claim pending in the application. The full text of Independent Claim 1 is as follows:

1. (currently amended) A method for making a battery, comprising:

exposing olivine or nasicon to a heated carbon source gas such that a coating is deposited on the olivine or nasicon, the coating consisting of carbon from the source gas; and

activating a positive electrode and a negative electrode with an electrolyte, the positive electrode including the carbon material deposited on the olivine or nasicon.

Rejection of claim 1 under 35 USC 112, second paragraph

Claim 1 stands rejected under the second paragraph 35 USC 112 for being indefinite. The only basis that the Office Action offers for this rejection is the following:

There is no antecedant basis for "carbon material" found in line 6 of claim 1.

In response to this rejection, the Applicant submitted an After Final Amendment on May 26, 2009. In this After Final Amendment, the Applicant canceled the term material from claim 1. However, the Advisory Action indicates that this amendment was not entered because "the changes to claims 1... comprises the new issues."

The Applicant notes that claim 1 satisfies 35USC112 even without the amendment in the Applicant's After Final Amendment. MPEP2173.05(e) sets forth the standards for a rejection based on the lack of antecedant basis. In particular MPEP2173.05(e) provides the following:

> ...the failure to provide explicit antecedent basis for terms does not always render a claim indefinite. **If the scope of a claim would be reasonably ascertainable by those skilled in the art, then the claim is not indefinite.** (emphasis added)

The scope of claim 1 is easily determined.

In claim 1, the phrase "carbon material" is preceded by the article "the." The use of the article "the" indicates that the "carbon material" was previously introduced into the claim. A look at the language preceding the phrase "carbon material" shows that "carbon" was already introduced. Since a skilled person recognizes that carbon is a material, a skilled person would recognize that the phrase "the carbon material" refers to the "carbon" that was previously introduced into the claim. Accordingly, the scope of the claim would be reasonably ascertainable by those skilled in the art.

MPEP2173.05(e) provides that a claim is not indefinite if the scope of the claim would be reasonably ascertainable by those skilled in the art. Since the scope of claim 1 is easily ascertainable, MPEP2173.05(e) establishes that claim 1 is not indefinite.

Rejection of Claim 1 Under 35 USC §102(a)

Claim 1 stands rejected under 35 USC §102(a) as being anticipated by either Hydro-Quebec WO 02/27823 or Hydro-Quebec WO 02/27824. The Office Actions cite the teachings in US2004/0033360 (Armand) as representing the teachings of WO 02/27823 and Hydro-Quebec WO 02/27824.

In response to the Applicant's previous argument, the Office Action points to Armand's Examples 1', 2, 3, and 13. However, these examples do not anticipate the Applicant's claim. In each of these examples, the source of carbon in Armand's coating is **non-gaseous** cellulose acetate and not the gaseous phase. The purpose of Armand's gas phase is to reduce a transition metal (iron in the cited examples). This idea can be discerned from Example 2 which provides the following in paragraph [0131]:

> Thus it is evident that the carbon that comes from decomposition of the cellulose acetate is not consumed and does not interfere in the reaction that reduces iron (III) to iron (II). **Thus this reduction is carried out by means of the gaseous phase.**

A more generalized version of this teaching can also be found in paragraph [0066]. As a result, the gaseous phase provides a reducing atmosphere.

In contrast, the non-gaseous cellulose acetate present in these examples serves as the source of carbon for the coating. Although this idea can be discerned from each of the examples, it is clear from example 1 which provides the following in paragraph [0121]:

> This sample contains 1% by weight of carbon, which corresponds to a carbonization yield of the cellulose acetate of 20%.

This idea can also be found in Example 3 which shows a correlation between the amount of cellulose acetate and the resulting amounts of carbon coating. For instance, paragraph [0141] states the following:

> As can be seen, the quantities of carbon conductor are proportional to the quantity of precursor added (cellulose acetate). *Parentheses in original.*

Example 2 also establishes this concept when it provides the following in paragraph [0131]:

> ... the carbon that comes from decomposition of the cellulose acetate ...

Accordingly, the cellulose acetate in these examples is the source of the carbon in Armand's coating.

Further, each of the cited examples teaches that the cellulose acetate is in a **non-gas** phase as shown in the following table.

Example	Paragraph	Quotation with emphasis added
1'	[0121]	The triphylite obtained in example I is impregnated with a **solution of cellulose acetate** ... in acetone.
2	[0127]	In a first step, the stoichiometric quantities of the two compounds, as well as the carbon source, (**cellulose acetate**, 39.7% by weight of acetyl, average molecular weight M_w of 50,000) ... **are crushed together** in isopropanol
3	[0136]	In a first step, the stoichiometric quantities of the two compounds, as well as **the cellulose acetate, are ground together** in isopropanol.
13	[0185]	The carbon additive mixture contains polyethylene-block-poly(ethylene glycol) as described in the previous examples, **dissolved in** isopropanol and **cellulose acetate**.

During the formation of the carbon coating, the non-gaseous cellulose acetate is pyrolyzed (paragraph [0048] and [0049]) to provide the carbon Armand's coating. As a result, the coating formed in these examples is not a "coating consisting of carbon from (a) source **gas**" as is claimed. Since Armand does not teach every element of claim 1, Armand does not anticipate claim 1.

CONCLUSION

The Applicant respectfully submits that legal error has been made in rejecting the pending claims under 35 USC §112 and under 35 USC §102(a). For these reasons, allowance of the pending claims is respectfully requested.

Respectfully submitted,

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